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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,069	09/19/2006	Teunis Willem Tukker	NL 040353	3749

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

ORTIZ CRIADO, JORGE L

ART UNIT	PAPER NUMBER
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2627

MAIL DATE	DELIVERY MODE
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07/07/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,069	Applicant(s) TUKKER ET AL.	
	Examiner JORGE L. ORTIZ CRIADO	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 14-17, 26 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18-25, 27 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-13, 18-25, 27 and 29, in the reply filed on 04/17/2009 is acknowledged.

The traversal is on the ground(s) that both groups have the same distinguishing features, so that there is no legal reason that the examine should insist on restriction.

This is not found persuasive because the suppose same distinguishing features are simply not found. Group II has a distinguishable feature of introducing a phase change with each change having modulo 2π substantially equal to the other phase which is not a distinguishable feature required by Group I.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13, 18-25, 27 and 29 rejected under 35 U.S.C. 102(b) as being anticipated by Ikenaka et al. US Patent Application Publication 2004/0047269.

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As per claim 1, Ikenaka et al. discloses an optical scanning device for scanning optical record carriers having information layers at different information layer depths within the carrier, the optical record carriers including a first optical record carrier having an information layer (2') at a first information layer depth d1, a second optical record carrier having an information layer at a second information layer depth d2 and a third optical record carrier having an information layer (2'') at a third information layer depth d.sub.3, wherein $d_3 < d_2 < d_1$ ([00414]-[416]; 1.2mm; 0.6mm; 0.1 mm), the scanning device including

a radiation source system (LDs) for producing first, second and third radiation beams, for scanning said first, second and third record carriers ([0390]), respectively, the device including a diffraction structure introducing first, second and third, different, wavefront modifications into at least part of the first, second and third, radiation beams, respectively, the diffraction structure being arranged to operate at selected diffraction orders m 1, m. 2, m 3, for the first, second and third radiation beams, respectively, characterised in that the diffraction structure is arranged such that the relation holds: $-1 < (m_3 - m_2)/(m_2 - m_1) - (d_3 - d_2)/(d_2 - d_1) < 1$

See [0480]-[0495]; k, m and n) values that holds the above.

As per claim 2, similarly as above the cited portion holds the expression as claimed.

As per claims 3-9 regarding annular protrusions concentrically about the axis, step profiles of different heights, the adaptation structure and phase structure are described with respect to Figs. 11-13 and paragraphs[599]-[625].

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As per claim 10, the selection of diffraction order values are shown in reference to the above cited portions that holds the relationship; [0480]-[0495]; k, m and n values.

As per claims 11 and 12, the three different wavelengths described about the ranges the described [for instance in 0476]).

As per claim 13, depth/thickness of 1.2mm; 0.6mm; 0.1 mm; [00414]-[416].

Claims 18-25 recites similar features to the ones treated above and rejected for the same reasons of anticipations.

As per claim 27, the system is arranged to focus to the desired focal point (Fig. 4 or Fig. 4).

As per claim 29, recites feature similar to the ones treated above with respect to claim 10 and rejected for the same reasons of anticipation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JORGE L. ORTIZ CRIADO whose telephone number is (571)272-7624. The examiner can normally be reached on Mon.-Fri 10:00 am- 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (571) 272-4483. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge L Ortiz-Criado/
Primary Examiner, Art Unit 2627